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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CM(M) 3991/2024**

AKSHAT JAIN

.....Petitioner

Through: **Mr. Sumeet Shokeen and Mr.
Kartikey Anand, Advocates.**

versus

**OPTIMAL MEDIA SOLUTIONS A DIVISION OF TIMES
INTERNET LTD**

.....Respondent

Through: **Mr. Devashish Bhaduria, Advocate.**

CORAM:

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

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05.12.2024

CAV 590/2024

Since learned counsel for the caveator/respondent has entered appearance, the caveat stands discharged.

CM APPL. 71182/2024 (exemption)

Allowed, subject to all just exceptions.

This application stands disposed of.

CM APPL. 71183/2024 (condonation of delay)

For the reasons stated in the application, delay in filing the petition stands condoned.

The application stands disposed of.

CM(M) 3991/2024 & CM APPL. 71181/2024 (stay)

1. Petitioner impugns the orders dated 09.08.2024 and 01.06.2023, passed the District Judge in Suit bearing No. CS (DJ) No. 561/2018.

2. Petitioner is one of the defendants in the Suit for Recovery filed by the respondent. Petitioner entered appearance in the above-mentioned suit



on 03.05.2008 and filed an application under Order 1 Rule 10 CPC, thereby, seeking his deletion from the array of parties on the ground that he was not even a partner in M/s. Hema Publicity Bureau during the relevant period when the alleged transaction took place.

3. Since no written statement was filed, trial court closed the right of the defendants to file written statement.

4. On 01.06.2023, trial court dismissed the application under Order 1 Rule 10 CPC for default and non-appearance and the petitioner was proceeded ex-parte.

5. Petitioner filed applications, one being under Order 9 Rule 7 CPC for setting aside the ex-parte order and another being under Section 151 CPC for restoration of the application under Order 1 Rule 10 CPC. However, both the said applications were dismissed vide order dated 09.08.2024.

6. Learned counsel for the petitioner has submitted that the notices issued by the trial court after Covid Pandemic were never served upon the petitioner and the period of delay between 01.06.2023 and 04.09.2023 did not cause any prejudice to the respondent. It is also submitted that petitioner could not appear and was not represented before the trial court post Covid Pandemic period owing to miscommunication between the petitioner and his previous counsel and in account of various other personal difficulties and losses suffered during the Pandemic. It is further submitted that petitioner would be seriously prejudiced in case the application under Section 1 Rule 10 CPC is not restored.

7. The petition has been opposed by the learned counsel for the respondent submitting that petitioner had been a regular defaulter and not at all diligent, inasmuch as, he did not appear before the court since 20.11.2018



and so much so, on account of non-filing of the written statement, his right to file the written statement was closed. It is argued that petitioner has failed to explain delay in filing the applications for setting aside the ex-parte order and for restoration of the application under Order 1 Rule 10 CPC, and therefore, the petition is liable to be dismissed.

8. Admittedly, petitioner had not been appearing before the trial court since 20.11.2018. Even though, his right to file written statement was already closed, application under Order 1 Rule 10 CPC was dismissed and he was proceeded ex-parte only on 01.06.2023. Application for setting aside ex-parte order and for restoration of application under Order 1 Rule 10 CPC was filed on 06.09.2023.

9. Rules of procedure are hand maids of justice. Any interpretation which eludes substantive justice is not to be followed. Procedural law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Even though, the conduct of the petitioner is not above board, it is felt that the delay in filing the applications under Order 9 Rule 7 and under Section 151 CPC is not inordinate.

10. Since the delay in filing the applications under Order 9 Rule 7 and under Section 151 CPC is not inordinate, the Court is of the view that in such circumstances, the question of delay should be considered more liberally so as to ensure that the *lis* between the parties is decided on merits rather than on technicalities. The Supreme Court in the case of **Collector Land Acquisition, Anantnag & Anr. vs. MST. Katiji & Ors.** [MANU/SC/04/60/1987] has laid down that such applications ought to be construed liberally and parties must be permitted to contest their case on merits.



11. No doubt, due to the conduct of the petitioner, certain delay has occurred to the case filed by the respondent, but then for such delay, respondent can be suitably compensated with cost.

12. In that view of the matter, the impugned orders dated 20.08.2024 and 01.06.2023, passed by the learned trial court are set aside subject to the petitioner paying to the respondent a cost of Rs. 20,000/- on or before the next date listed before the trial court.

13. Once the cost is paid on the date fixed, as directed, the petitioner would get only one opportunity to submit arguments before the trial court on his application under Order 1 Rule 10 CPC. It is made clear that petitioner shall not get any further opportunity for arguments on the application for any reason whatsoever.

14. Petition is accordingly disposed of.

RAVINDER DUDEJA, J.

DECEMBER 5, 2024

RM